

EXPLANATORY MEMORANDUM TO
THE IRAN (SANCTIONS) (NUCLEAR) (EU EXIT) REGULATIONS

2019 No. 461

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations are intended to ensure that the UK can operate an effective sanctions regime in relation to Iran after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regime relating to Iran's nuclear weapons programmes that is currently in force under EU legislation and related UK regulations. This sanctions regime also gives effect to the UK's obligations under United Nations Security Council resolution 2231.
- 2.2 There is another Iran sanctions regime, aimed at encouraging the Government of Iran to comply with international human rights law and to respect human rights, which is dealt with in the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is laid before Parliament under section 55(6) of the Sanctions and Anti-Money Laundering Act 2018 ("**the Sanctions Act**") and is subject to the negative procedure. This instrument does not come into force until a date or dates to be appointed in separate regulations made under section 56 of the Sanctions Act (see regulation 1(2)). Section 56 of the Sanctions Act enables special provision to be made for the commencement of sanctions regulations where such provision is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the UK.
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is the UK.
- 4.3 This instrument also applies to conduct by UK persons outside the UK. In addition, the maritime enforcement powers contained in Part 9 of this instrument apply in relation to

British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The UK's implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972. Each sanctions regime generally consists of an EU Council Decision, a corresponding directly-applicable EU Council Regulation, and related UK regulations made under section 2(2) of the European Communities Act 1972 and other domestic legislation. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These include country-specific sanctions regimes, including in relation to Russia and the DPRK, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups.
- 6.2 The European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 and provides for some EU sanctions law to form part of domestic law after the UK has left the EU. However, that Act does not provide powers to substantially amend that retained EU law and it does not provide powers to lift sanctions or impose new sanctions. In addition, that Act does not retain the effect of certain sanctions (travel bans) which are in force by virtue of EU Council Decisions (rather than under EU Regulations). The Sanctions Act was introduced to address these issues by providing the UK with the legal framework necessary to allow the UK to implement sanctions autonomously.
- 6.3 Section 1 of the Sanctions Act enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for a number of other purposes which include: national security; promoting international peace and security; furthering a foreign policy objective of the Government; or contributing to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction.
- 6.4 The EU sanctions regime imposed on Iran in relation to nuclear activities has effect in the UK through both EU instruments and related UK regulations. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by these Regulations: Council Regulation (EU) No 267/2012 of 23 March 2012 (a directly applicable regulation that would otherwise form part of domestic law on exit day under the EU (Withdrawal) Act 2018); the Iran (European Union Financial Sanctions) Regulations 2016 (made under section 2(2) of the European Communities Act 1972); the Export Control (Iran Sanctions) Order 2016 (made under both the European Communities Act 1972 and the Export Control Act 2002); and the Iran (Financial Sanctions) Order 2007 (made under the United Nations Act 1946).

7. Policy background

What is being done and why?

- 7.1 Her Majesty's Government's (HMG's) policy on Iran includes the use of sanctions to encourage Iran's compliance with the relevant UN obligations, promote the

abandonment by Iran of nuclear weapons programmes, and to restrict the ability of Iran to develop nuclear weapons and nuclear weapons delivery systems. There is an existing EU sanctions regime in relation to nuclear activities in Iran. It was established in 2007 to meet EU Members States' obligation under international law to implement UN sanctions imposed under United National Security Council resolution 1737 (2006), which introduced sanctions against Iran for its proliferation-sensitive nuclear activities. The EU complemented UN sanctions with additional autonomous sanctions for the same purpose of constraining Iran's proliferation-sensitive nuclear activities. In January 2016, the EU began implementation of the Joint Comprehensive Plan of Action (JCPOA). The JCPOA was agreed by the E3 (UK, France and Germany), the US, Russia, China and Iran – with the EU as coordinator. The US withdrew from the agreement in 2018. The JCPOA was designed to ensure the exclusively peaceful nature of Iran's nuclear programme and includes eventual lifting of all UN, multilateral and national sanctions related to Iran's nuclear programme in return for monitored, verified implementation of nuclear-related measures by Iran.

- 7.2 The JCPOA employs a phased approach and includes reciprocal commitments as laid down in the agreement and endorsed by the UN Security Council. As a result of the JCPOA, the EU suspended a number of sanctions in connection with the Iranian nuclear programme in January 2016. Sanctions that are suspended include financial, banking and insurance measures on non-designated individuals and entities; restrictive measures on Iran's oil, gas and petrochemical sectors; and prohibitions on sale, supply, purchase, export, transfer or transport of gold and precious metals. Sanctions that remain in place include the arms embargo, restrictive measures related to missile technology, restrictions on certain nuclear-related transfers and activities, and provisions concerning graphite and other semi-finished metals and software, which are subject to an authorisation regime. If Iran continues to meet its commitments under the JCPOA, the EU will suspend its proliferation-related sanctions, including arms and missile technology sanctions, in October 2023 and terminate all of sanctions suspended in January 2016. In October 2025, the EU will terminate all its remaining nuclear-related provisions and all UN provisions still in place will also be terminated.
- 7.3 Bringing this sanctions regime into UK law using the powers in the Sanctions Act will enable all the sanctions measures to continue to operate effectively after the UK leaves the EU, as well as enabling HMG to amend and lift the sanctions, or impose further sanctions, autonomously.
- 7.4 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.5 Firstly, and in accordance with section 2(4) of the Sanctions Act, a report has been produced to explain why the Minister considers that the carrying out of the stated purposes of this instrument would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for those purposes
- 7.6 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument; explains why there are good reasons for those offences; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, breaching the prohibitions on exporting certain goods to Iran.

- 7.7 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It provides that any person for the time being named by the Security Council for the purposes of United National Security Council resolution 2231 (2015) is a designated person for the purposes of the asset-freezing and other financial measures. It also lists the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban or asset freeze.
- 7.8 The names of designated persons are not included in this instrument. The names of those designated by the Secretary of State will be held on a separate administrative list on gov.uk to enable immediate publication following a decision to make or amend a designation. This limits the opportunity for designated persons to remove assets from the UK. Persons designated by the UN are listed on the United Nations Security Council Consolidated List and designations will also be publicised on gov.uk.
- 7.9 Part 3 of the instrument sets out financial sanctions measures that can be imposed on designated persons. Financial sanctions include freezing a designated person's funds and economic resources (non-monetary assets, such as property or vehicles) and ensuring that funds and economic resources are not made available to or for the benefit of a designated person or entity, either directly or indirectly. The instrument sets out exceptions and licensing derogations from these sanctions that will be applicable or available, as the case may be, under certain prescribed circumstances, such as to enable those listed to have access to funds to satisfy their basic needs.
- 7.10 Part 4 of the instrument sets out the effect of immigration measures made under this instrument. Designation under regulation 5 of the instrument means that section 8B of the Immigration Act 1971 then applies to the designated person: a designated person is banned from travelling to or via the UK and any permission to stay in the UK that they may have is cancelled. The Secretary of State may direct, on an individual basis, that the travel ban does not apply. The travel ban in respect of persons named on the UN's Consolidated List is implemented through section 8B of the Immigration Act 1971, and not these Regulations.
- 7.11 Part 5 of the instrument sets out trade sanctions. These sanctions include restrictions on the trade of certain goods and technology including military goods and technology, missile-related goods and technology, nuclear-related goods and technology, graphite and relevant metals, and enterprise resource planning software. There are further prohibitions on arrangements relating to uranium mining or certain restricted goods and technology, for example the acceptance of a loan from a person connected with Iran where the object of the loan is to enable that person to participate in a commercial activity involving uranium mining or certain goods and technology such as missile-related goods. There are also prohibitions on services related to certain ships and aircraft.
- 7.12 Part 6 of the instrument makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions and requirements under this regime. For example, and in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released in order to pay for essential goods or services such as food. It states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 2 of the instrument. Part 6 also details exceptions to trade prohibitions. It states that licences provided by the Secretary of State may permit activity prohibited by Part 5 (Trade). Guidance will provide further detail about licensing.

7.13 Part 9 of the instrument confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but it relates to the withdrawal of the UK from the EU. This is because this instrument replaces, with substantially the same effect, the existing EU sanctions regime relating to Iran's nuclear activities.

9. Consolidation

9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 HMG ran a public consultation on the Sanctions Act which was open for nine weeks. Over 30,000 individuals and companies received a copy of the White Paper, and 34 individuals provided written responses. Government officials held a number of roundtables with key sectors, including financial services, trade bodies, the legal profession, NGOs and industry professionals and regulators. The main areas of concern raised in consultation responses were around the legal threshold for sanctions designations, the rights of designated persons to challenge their designations, and licensing procedures. All of these concerns were taken into account in the drafting of the Sanctions Act.

10.2 There is neither a requirement in the Sanctions Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult in respect of this instrument. HMG will continue engagement with stakeholders on the implementation of UK sanctions.

11. Guidance

11.1 In accordance with section 43 of the Act, guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be available on gov.uk before these Regulations come into force.

12. Impact

12.1 As this instrument maintains existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law, we assess that there is no new substantial impact. Businesses and charities will need to ensure that they are referring to and complying with the relevant UK law once the UK leaves the EU.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure existing sanctions remain in place following EU exit. This instrument is intended to substantially deliver the same policy effects as the existing

EU sanctions. An impact assessment was, however, produced for the primary legislation and can be found at <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>. That assessment concluded that the introduction of the Act, and statutory instruments under it to transfer existing regimes into UK law, would overall reduce uncertainty for business and would not result in significant costs or impact, apart from some familiarisation costs for businesses associated with adapting to the new legislative framework.

13. Regulating small business

- 13.1 These Regulations apply to activities that are undertaken by small businesses.
- 13.2 These Regulations are intended to continue the regulatory requirements under the existing EU sanctions regime. The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirements to comply with these Regulations as this could provide a route for the circumvention or evasion of sanctions.

14. Monitoring & review

- 14.1 The Sanctions Act requires regular reviews of these Regulations. Under section 30 of the Act, the Secretary of State must consider whether or not these Regulations are still appropriate for their stated purpose and lay an annual report before Parliament, confirming either that is the case or explaining what action has or will be taken in consequence of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

15. Contact

- 15.1 Ann Herrigan at the Foreign and Commonwealth Office telephone: 020 7008 3830 or email: Sanctions.SIs@fco.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Qudsi Rasheed, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Sir Alan Duncan MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.